Although the elements of the offence created by the re-enacted s 67(1) are substantially the same as the elements of the offence under the repealed s 67(1), the punishment for the offence is not the same: the re-enacted section provides for a heavier punishment.

For a first offender, the punishment under the repealed section was 'a fine not exceeding $1,000 or to imprisonment for a term not exceeding 6 months'. Whereas under the re-enacted section the punishment is a mandatory sentence of 'a fine of not less than $1,000 and not more than $5,000 or to imprisonment for a term not exceeding 6 months'.

For a second offender, the punishment under the repealed section was 'a fine not exceeding $2,000 or to imprisonment for a term not exceeding 12 months or to both'. Whereas under the re-enacted section the punishment is a mandatory 'fine of not less than $3,000 and not more than $10,000 and to imprisonment for a term not exceeding 12 months'.

Now is this a second conviction of the respondent under s 67(1)? Under the repealed section, the court had a discretion as to the punishment. Under the re-enacted section, the court has no discretion as to the punishment.

A distinction should be made between an amendment by deletion or insertion of words from or into an existing legislation, and an amendment by the repeal of the whole section and substituting therefor a new section. The re-enacted s 67(1) is in fact a new section.

Article 11(1) of the Constitution of the Republic of Singapore protects a person against retrospective criminal laws.

In my view the respondent was charged and convicted under the re-enacted s 67(1) for the first time, notwithstanding that he had been dealt with under the repealed s 67(1) once before on 5 March 1990.

To treat the respondent as a second offender under the re-enacted section is to apply the re-enacted section to him retrospectively. The words preceding the provision for punishment of a second or subsequent offender under the re-enacted s 67(1) are 'in the case of a second or subsequent conviction'. These words can only mean a second or subsequent conviction under the re-enacted s 67(1).

Appeal dismissed.

Solicitors: *Wee Tay & Lim.*

Reported by *S Surenthiraraj*

Bank of China v Asiaweek Ltd

HIGH COURT (SINGAPORE) — SUIT NO 1206 OF 1989
THEAN J
30 JANUARY 1991

Civil Procedure — Pleadings — Striking out — Defamation action — Whether filing of defence is frivolous, vexatious and an abuse of the process of court — Rules of the Supreme Court 1970, O 18 r 19

Tort — Defamation — Whether words complained off were defamatory in their natural and ordinary meaning — Whether an apology amounts to admission of defamation — Statutory defence — Whether requirements fulfilled — Defamation Act (Cap 75, 1985 Ed), s 7

On 18 June 1989, the defendant published a statement in a magazine stating that as a result of political repression in China, the Singaporean Chinese had made a run on the Bank of China's Singapore branch, and quoted the deputy general manager as saying that 'Up to last Thursday, a total of about US$75m was withdrawn, leaving the bank no alternative but to suspend business temporarily.' The plaintiff complained that the quoted words were defamatory, and on 23 July 1989 the defendant published an apology. When no settlement was reached on making amends, the plaintiff commenced an action in defamation against the defendant. Two defences were raised: firstly a bare denial that the words complained of were defamatory to the plaintiff or were understood to bear the meanings as alleged by the plaintiff or any other meaning defamatory of the plaintiff; and secondly, the statutory defence under s 7 of the Defamation Act. The plaintiff then applied to strike out the defence and enter judgment under O 18 r 19 of the Rules of the Supreme Court 1970 and under the inherent jurisdiction of the court. The registrar granted the application and gave the plaintiff leave to enter interlocutory judgment. The defendant appealed against this decision.

Held, dismissing the appeal:

(1) Striking out the whole of a defence to a claim for libel is an extraordinary step and is only allowed in plain and obvious cases. The present case is a plain and obvious case. The question whether a point is plain and obvious does not depend upon the length of time it takes to argue. Rather the question is whether, when the point has been argued, it has become plain and obvious that there can be but one result. There is not the slightest doubt here that the defence is wholly unsound and unsustainable, and striking it out will obviate the necessity for a trial.

(2) Of the two defences raised, on a careful examination of the pleadings and other documents, both these defences are manifestly unsustainable, frivolous and vexatious and a sham, and the raising of these defences appears to be a delaying strategy and in effect amounts to an abuse of the process of the court.

(3) As to whether the words were defamatory to the plaintiff, the natural and ordinary meaning of the words is to be determined by the court. The question is one purely of construction of the words, and the approach to be adopted in construing these words is to consider what meaning the words would convey to ordinary reasonable persons using their general knowledge and common sense. Such meaning is not confined to a literal or strict meaning of the words but includes any inferences or implications which could reasonably be drawn by such persons.

(4) The words alleged to be defamatory in particular convey the meaning that the plaintiff's branch in Singapore, after a total withdrawal of US$75,000,000 by its depositors, had no funds or financial resources to meet further withdrawal by its depositors and had become temporarily insolvent. There is not the slightest doubt that these words are defamatory of the plaintiff. They impute an inability to discharge its obligations as a bank to its depositors, insolvency and lack of financial resources on the part of the plaintiff as a bank; they tend to injure the credit of the plaintiff as a bank, they tend to lower the plaintiff in the estimation of right-thinking members of society generally.

(5) In 1989, the defendant had made a material admission in admitting that the report about the plaintiff suspending business temporarily was incorrect, apologizing to the plaintiff, agreeing to withdraw the report, and further admitting that the report 'cast a bad light on the reputation and position of the Bank of China'. In the circumstances, it is impossible to see how it can be maintained that the words complained of are not libellous.

(6) As to the second defence, this is a statutory defence, the success of which depends on whether the defendant has satisfied the requirements under s 7 of the Defamation Act (Cap 75, 1985 Ed) ('the Act'). On the evidence, the words complained of were not published innocently in relation to the plaintiff, and an offer of amends was not made as soon as practicable after the defendant received notice that the words complained of were or might be defamatory to the plaintiff. The purported offer of amends has not complied with the provisions of s 7(3)(b) of the Act as it did not contain an offer to take such steps as reasonably practicable on the part of the defendant to notify persons to whom copies had been distributed that the words were alleged to be defamatory of the plaintiff. Plainly the defendant has not complied with the several requirements under s 7 of the Act and even if there was, it was not made within the time frame prescribed in that section. The statutory defence therefore cannot succeed, now or at a trial.

Cases referred to

1 *Drummond-Jackson* v *British Medical Association & Ors* [1970] 1 WLR 688; [1970] 1 All ER 1094 (folld)
2 *Williams and Humbert* v *W & H Trade Marks (Jersey) Ltd* [1986] 1 AC 368 (folld)
3 *Slim & Ors* v *Daily Telegraph Ltd & Ors* [1968] 2 QB 157 (folld)
4 *Jones* v *Skelton* [1963] 3 All ER 952 (folld)
5 *Sim* v *Stretch* [1936] 2 All ER 1237 (folld)
6 *Forster & Ors* v *Lawson* (1826) 3 Bing 451; 130 ER 587 (folld)
7 *Mclaren* v *Davies* (1890) 6 TLR 372 (folld)
8 *Sandison* v *Malayan Times Ltd & Ors* [1964] MLJ 332 (folld)

Legislation referred to

Defamation Act (Cap 75, 1985 Ed) s 7
Rules of the Supreme Court 1970 O 18 r 19

VK Rajah for the plaintiff.
Imran H Khwaja for the defendant.

Cur Adv Vult

Thean J: The plaintiff is a bank incorporated in the People's Republic of China and carries on banking business in Hong Kong, Singapore and elsewhere. The defendant is a publisher of, among other things, a magazine in the Chinese language known as *Yazhou Zhoukan* (which is the Chinese edition of *Asiaweek*). The magazine is circulated and read in Hong Kong, Singapore, Malaysia, Indonesia and elsewhere. In the edition dated 18 June 1989 of *Yazhou Zhoukan*, which was published prior to that date, there appeared on p 22 thereof a paragraph, which as translated into English reads:

> As Singapore is highly sensitive to any forms of opposition, the Chinese there did not stir up waves of protests against Beijing. However, as a protest against the atrocity of Beijing, they made a run on the Bank of China Singapore Branch which is directly under Beijing. The deputy general manager of the bank, Min You Chi, told *Asiaweek*: 'In the light of what has happened, the feeling of depositors is understandable.' *Up to last Thursday, a total of about US$75m was withdrawn, leaving the bank no alternative but to suspend business temporarily.* (Emphasis added.)

The plaintiff complained that the words contained in that paragraph, and in particular the italicized words, were defamatory of the plaintiff and demanded that the defendant should immediately publish a complete retraction of the words complained of and an apology on terms to be approved by the plaintiff. Upon the defendant's refusal to comply with such demand, the plaintiff on 24 June took out a writ against the defendant claiming damages for libel.

There followed correspondence between the solicitors for the defendant and the plaintiff respectively with a view to an amicable settlement; unfortunately, the proposals made and discussed between them did not lead to fruition. The suit accordingly proceeded. The plaintiff delivered the statement of claim on 14 July 1989 and the defendant delivered the defence on 31 July 1989. On 1 August 1989, the defendant filed an affidavit affirmed by its director and editor-in-chief, Michael O'Neill, on 26 July 1989, which was purported to be filed pursuant to s 7 of the Defamation Act (Cap 75, 1985 Ed) ('the Act'). I shall have occasion to refer to the pleadings and this affidavit in greater detail in a moment.

On 16 August 1989, the plaintiff took a bold step by applying by Summons-in-Chambers No 4767 of 1989 for an order under O 18 r 19 of the Rules of the Supreme Court 1970 and under the inherent jurisdiction of the court that the defence be struck out and the plaintiff be at liberty to enter judgment against the defendant for damages to be assessed and costs. The application was heard before the senior assistant registrar who allowed the application; he struck out the defence and gave leave to the plaintiff to enter interlocutory judgment. Interlocutory judgment was subsequently entered. Against that decision, this appeal was brought. At the conclusion of the hearing, I found myself in entire agreement with the learned senior assistant regis-

trar and dismissed the appeal with costs. I now give my reasons.

Striking out the whole of a defence to a claim for libel is an extraordinary step and is only allowed in a plain and obvious case. In *Drummond-Jackson* v *British Medical Association & Ors*,[1] the plaintiff brought an action against the defendants for libel in respect of an article published in the *British Medical Journal*. The defendants applied to strike out the statement of claim. The application was dismissed by the master and, on appeal, by Milmo J. On further appeal, the Court of Appeal, by a majority, dismissed it. Lord Pearson after referring to O 18 r 19 of the English Rules of Supreme Court said, at pp 695-696:

> Over a long period of years it has been firmly established by many authorities that the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases. The authorities are collected in *The Supreme Court Practice 1970*, under the heading 'Exercise of powers under this rule' in the notes under RSC O 18 r 19 p 284. One which might be added is *Nagle* v *Feilden* [1966] 2 QB 633, 648, 651. Reference has been made to four recent cases: *Rondel* v *Worsley* [1969] 1 AC 191; *Wiseman* v *Borneman* [1969] 3 WLR 706; *Roy* v *Prior* [1970] 1 QB 283; and *Schmidt* v *Home Office* [1969] 2 Ch 149. In each of these cases there was an important question of principle involved, and the hearing of the application under RSC, O 18 r 19 was much longer and more elaborate than is usual, but the final decision was that the alleged cause of action was clearly unsustainable, and so the statement of claim disclosed no reasonable cause of action and was ordered to be struck out. There was no departure from the principle that the order for striking out should only be made if it becomes plain and obvious that the claim or defence cannot succeed, but the procedural method was unusual in that there was a relatively long and elaborate instead of a short and summary hearing.

The present case is, in my opinion, a plain and obvious case, though counsel for the plaintiff and the defendant each developed prolonged and serious arguments before me — both counsel took more than a day on their arguments. But, in the words of Sir Gordon Willmer in *Drummond-Jackson*[1] at p 700, the question whether a point is plain and obvious does not depend upon the length of time it takes to argue. Rather the question is whether, when the point has been argued, it has become plain and obvious that there can be but one result.

On the question of striking out, counsel for the plaintiff also referred me to following pronouncement of Lord Templemen in *Williams and Humbert* v *W & H Trade Marks (Jersey) Ltd*[2] at pp 435-436:

> My Lords, if an application to strike out involves a prolonged and serious argument the judge should, as a general rule, decline to proceed with the argument unless he not only harbours doubts about the soundness of the pleading but, in addition, is satisfied that striking out will obviate the necessity for a trial or will substantially reduce the burden of preparing for trial or the burden of the trial itself.

This is a much stronger case than that stated by Lord Templemen. I harbour more than doubts about the soundness of the defence; indeed I have not the slightest doubt at all, as I shall show in a moment, that the defence is wholly unsound and unsustainable, and I am fully satisfied that striking it out will obviate the necessity for a trial.

I turn first to the pleadings. The statement of claim by paras 3,4 and 5 averred as follows:

> 3 In their edition of the magazine dated 18 June 1989, the defendant caused to be published at p 22 thereof an article containing libellous words referring to the plaintiff's branch in Singapore. The following libellous words (in Chinese characters) appeared in the said article: ... The libellous words (as translated into English by a High Court interpreter) are as follows:
>
> > 'Up to Thursday, a total of about US$75m was withdrawn, leaving the bank no alternative but to suspend business temporarily'.
>
> The said words referred and can only be understood to refer to the plaintiffs.
>
> 4 The said words in asserting that the plaintiff had 'no alternative but to suspend business temporarily' were malicious and false in that the plaintiffs had at no material time suspended its business temporarily or at all nor was it unable to meet the withdrawal requests of its customers.
>
> 5 The said words in their natural and ordinary meaning meant and were understood to mean:
> (i) that the plaintiff and/or its Singapore branch after the withdrawal of US$75m from their Singapore branch were insolvent and/or temporarily insolvent;
> (ii) the plaintiff had inadequate funds to meet the withdrawal requests of its customers;
> (iii) the plaintiff were not bankers of high standing and creditworthiness as they were unable to meet withdrawal requests in excess of US$75m;
> (iv) the plaintiff had failed to adequately protect and safeguard the interests of its customers by failing to maintain adequate liquidity reserves with its Singapore branch;
> (v) the plaintiff did not have sufficient standing to obtain credit lines from other banks and hence had 'no alternative' but to suspend business temporarily; and
> (vi) the plaintiff was untrustworthy.

In response, the defendant in the defence pleaded in paras 2 to 6 as follows:

> 2 Save that it is denied that the words complained of were libellous, paras 2 and 3 of the statement of claim are admitted.
> 3 Save that it is denied that the words complained of were malicious, no admissions are made in respect of para 4 of the statement of claim.
> 4 The defendant denies that the words complained of bore or were understood to bear any meaning defamatory of the plaintiff and accordingly paras 5 and 6 of the statement of claim are denied.
> 5 The words complained of were published by the defendant innocently in relation to the plaintiff and an offer of amends under and for the purposes of s 7 of the Defamation Act (Cap 75) was formally made by the defendant by letter dated 28 July 1989 as soon as practicable after the

defendant received notice that the words complained of might be defamatory of the plaintiff, and the said offer has not been withdrawn.

6 Paragraph 7 of the statement of claim is denied. Before the filing and delivery of the statement of claim herein, in the 25 June 1989 issue of *Yazhou Zhoukan* at p 29 thereof, the plaintiff published the following words as translated from the Chinese language into English by a High Court interpreter.

Particulars

See Annexure A

The publication in Annexure A, as translated into English, in so far as material, said:

> ... there was a run on the Bank of China in the said country. The deputy general manager of the said bank, Singapore Branch, Mr Min You-Chi told Asiaweek:
>
> > 'some of those who withdrew did so out of protest but I believe many more withdrew because they do not know the asset condition of the Bank. They are afraid that something may happen to their hard earned money.'
>
> The Monetary Authority of Singapore at that time immediately stated that the assets of the Bank of China are sufficient to meet the withdrawals. There were also sufficient cash to cope with the run on the bank.

Purely on these pleadings, the defendant has raised only two defences: (i) a bare denial that the words complained of were defamatory of the plaintiff or were understood to bear the meanings as alleged by the plaintiff or any other meaning defamatory of the plaintiff, and (ii) the statutory defence under s 7 of the Defamation Act. A careful examination of the pleadings and other documents before me — I shall set out these documents in detail shortly — have led me to the inescapable conclusion that both of these defences are manifestly unsustainable, that they are frivolous and vexatious and a sham, and that the raising of these defences appears to be a delaying strategy and, in effect, amounts to an abuse of the process of the court.

I now turn to the first defence, and in that respect it is necessary to consider, first, the meaning of the words complained of and, secondly, whether the words bearing such meaning are defamatory of the plaintiff. The plaintiff relied on the natural and ordinary meaning of the words, and in such case no evidence is admissible of their meaning of the sense in which they were understood or of any facts giving rise to any inferences that could be drawn from the words used: see para 1311 of *Gatley on Libel & Slander* (8th Ed). The natural and ordinary meanings of the words, in the context they are set out, is to be determined by the court. In *Slim & Ors* v *Daily Telegraph Ltd & Ors*[3] at pp 174-175, Diplock LJ said: '... where an action for libel is tried by a judge alone without a jury, it is he who has to arrive at a single 'right' meaning as 'the natural and ordinary meaning' of the words complained of ....'. He repeated this at p 176:

> But where a judge is sitting alone to try a libel action without a jury, the only questions he has to ask himself are: 'Is the natural and ordinary meaning of the words that which is alleged in the statement of claim? and: 'If not, what, if any, less injurious defamatory meaning do they bear?

And at p 177 he said:

> What then is this court to do? I do not think we need send it back for a retrial. No oral evidence given at the trial throws any light upon the natural and ordinary meaning of the words to readers of the correspondence columns in the *Daily Telegraph*. This court is in as good a position as the judge to determine what is the natural and ordinary meaning of the words, and in so far as any action for libel can be a simple case, I think that this one is.

In this case, I was in as good a position, on the hearing of the appeal, as a judge trying the action to determine the natural and ordinary meaning of the words.

What then is the natural and ordinary meaning of the words complained of? The question is one purely of construction of the words, and the approach to be adopted in construing these words is to consider what meaning the words would convey to ordinary reasonable persons using their general knowledge and common sense. Such meaning is not confined to a literal or strict meaning of the words but includes any inferences or implications which could reasonably be drawn by such persons: para 4.04 of *Duncan and Neil on Defamation* (2nd Ed). Lord Morris of Borth-y-Gest in *Jones* v *Skelton*[4] said at p 958:

> The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or any indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words (see *Lewis* v *Daily Telegraph Ltd* [1963] 2 All ER 151). The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense.

The plaintiff in para 5 of the statement of claim ascribed to the words no less than six meanings cumulatively (the details of which I have earlier set out). I do not think that to ordinary reasonable persons the words would convey such a comprehensive range of meanings. In my judgment, they would convey some of the meanings ascribed to them by the plaintiff. In particular, they would convey the meaning that the plaintiff's branch in Singapore after a total withdrawal of US$75m by its depositors had no funds or financial resources to meet further withdrawal by its depositors and had become temporarily insolvent.

The next question is whether the words in the natural and ordinary meaning as I have found are defamatory of the plaintiff. I have not the slightest doubt that they are. They impute an inability to discharge its obligations as a bank to its depositors, insolvency and lack of financial resources on the part of the plaintiff as a bank; they tend to injure the credit of the plaintiff as a bank; applying the test laid down by Lord Atkin in *Sim* v *Stretch*[5] at p 1240, they tend to lower the plaintiff in the estimation of right-thinking members of society generally.

In an old case *Forster & Ors* v *Lawson*[6] the defendants published a statement which said, among other things, that the plaintiff bank had 'stopped payment', and it was held that such publication was defamatory. Best CJ said, at pp 456-457:

> It has also been urged that the words contained in the paragraph are not actionable. I have no hesitation in deciding, that to say of any bankers they have suspended payment, is actionable. For, what can be the meaning of such a statement, except that they are no longer solvent? Saying that a banker has suspended payment is saying that he cannot pay his debts. A temporary inability to pay debts is insolvency. The charge of suspending payment is a charge of insolvency. Such a statement will instantly bring all the creditors of a banking-house upon it, and completely stop their business by preventing any one from taking their bills.

Counsel for the plaintiff argued that the words complained of were, on the face thereof, defamatory of the plaintiff. The offending article stated, inter alia: 'as a protest against the atrocity of Beijing, [the Chinese in Singapore] made a run on the Bank of China Singapore Branch which is directly under Beijing ... Up to last Thursday, a total of about US$75m was withdrawn, leaving the bank no alternative but to suspend business temporarily'. Counsel submitted that the words meant that owing to the withdrawal of that huge sum of money, the plaintiff as a bank failed to meet its financial obligations and became insolvent; such words clearly injured the credit of the plaintiff as a bank. I am inclined to agree with this submission.

It is of no small consequence that the defendant admitted that the words were defamatory of the plaintiff. The defendant by way of mitigation of damages by para 7 pleaded, inter alia, that the defendant published in the 23 July 1989 issue of *Yazhou Zhoukan* an apology which as translated into English is as follows:

> Apology Announcement
>
> Our magazine on 18 June 1989, in one of the paragraphs at p 22 mentioned that the Singapore branch of Bank of China temporarily suspended business as they could not cope with the run made on it by its depositors in Singapore.
>
> Bank of China, Singapore Branch pointed out that their branch had met all the demands of their depositors concerning withdrawals. The amount withdrawn by depositors has never affected and will not affect the business of Bank of China in Singapore and internationally. The said bank has never ceased its business operation and activities in Singapore.
>
> Our report on 18 June stating that the Bank of China had suspended business temporarily is incorrect. We express regret and apologize for any inconvenience caused as a result to Bank of China Hongkong Branch, Singapore Branch and branches elsewhere. At the same time, we agree to withdraw the above-mentioned report which *cast a bad light on the reputation and position of Bank of China.* (Emphasis added.)

In that publication the defendant admitted that the report on 18 June 1989 that the plaintiff had suspended business temporarily was incorrect, it apologized to the plaintiff and agreed to withdraw that report, and further it admitted that the report 'cast a bad light on the reputation and position of Bank of China'. This, in my opinion, is a material admission by the defendant.

In the case of *Mclaren* v *Davies*,[7] the defendant admitted the libel, but at the trial the judge directed the jury on the question whether there was a libel or not, and the jury returned a verdict in favour of the defendant. The plaintiff moved for a new trial on the ground of misdirection by the judge to the jury. In allowing a new trial on the ground of misdirection, Cave J said, at p 373:

> The pleading of the defendant Davis admitted a libel. Throughout the trial and until the summing up there was no question but that it was a libel. The point was called to the learned Baron's attention by one of the jury, who asked if they could find that there was no libel. To this he had replied that they could. But it would be dangerous to allow a jury to give a finding out of their own head, so to speak, against an admission in pleading on a point not raised or argued during the trial. The jury, therefore, ought not to find that there was no libel, which alone would justify the verdict. The verdict was also complained of as against the weight of evidence. It was impossible to see how any jury could say this was not a libel. The circumstances under which a libel was published could not affect that unless there were terms in it which required explanation.

In the circumstances of the case here, it is impossible to see how it can be maintained, as the defendant sought to maintain, that the words complained of are not libellous.

I now come to the second defence raised by the defendant in the pleadings. The defendant in para 5 of the defence averred that the words complained of were published innocently in relation to the plaintiff and an offer of amends under and for the purpose of s 7 of the Act was formally made by the defendant, ie by its solicitors' letter dated 28 July 1989, as soon as practicable after the defendant had received notice that the words complained of might be defamatory of the plaintiff and that the said offer has not been withdrawn. This is a statutory defence, the success of which depends on whether the defendant has satisfied the requirements

under s 7 of the Act. It is necessary and convenient at this stage to set out, in so far as relevant, the provisions of s 7 which are as follows:

> (1) A person who has published words alleged to be defamatory of another person may, if he claims that the words were published by him innocently in relation to that other person, make an offer of amends under this section and in any such case —
>
> (a) ...
> (b) if the offer is not accepted by the party aggrieved, then, except as otherwise provided by this section, it shall be a defence, in any proceedings by him for libel or slander against the person making the offer in respect of the publication in question, to prove that the words complained of were published by the defendant or were published by the defendant innocently in relation to the plaintiff and that the offer was made as soon as practicable after the defendant received notice that they were or might be defamatory of the plaintiff, and has not been withdrawn.
>
> (2) An offer of amends under this section must be expressed to be made for the purpose of this section, and must be accompanied by an affidavit specifying the facts relied upon by the person making it to show that the words in question were published by him innocently in relation to the party aggrieved; and for the purposes of a defence under subsection (1)(b) no evidence, other than evidence of facts specified in the affidavit, shall be admissible on behalf of that person to prove that the words were so published.
>
> (3) An offer of amends under this section shall be understood to mean an offer —
>
> (a) in any case, to publish or join in the publication of a suitable correction of the words complained of, and a sufficient apology to the party aggrieved in respect of those words;
> (b) where copies of a document or record containing the said words have been distributed by or with the knowledge of the person making the offer, to take such steps as are reasonably practicable on his part for notifying persons to whom copies have been so distributed that the words are alleged to be defamatory of the party aggrieved.
>
> (4) ...
>
> (5) For the purposes of this section, words shall be treated as published by one person (referred to in this subsection as the publisher) innocently in relation to another person if and only if the following conditions are satisfied:
>
> (a) that the publisher did not intend to publish them of and concerning that other person, and did not know of circumstances by virtue of which they might be understood to refer to him; or
> (b) that the words were not defamatory on the face of them, and the publisher did not know of circumstances by virtue of which they might be understood to be defamatory of that other person;
>
> and in either case that the publisher exercised all reasonable care in relation to the publication; and any reference in this subsection to the publisher shall be construed as including a reference to any servant or agent of his who was concerned with the contents of the publication.
>
> (6) Subsection (1)(b) shall not apply in relation to the publication by any person of words of which he is not the author unless he proves that the words were written by the author without malice.

To succeed on the statutory defence under this section, the defendant has to surmount several hurdles as provided in the section. First, under sub-s (1)(b) of that section the defendant has to show that the words complained of were published by it 'innocently in relation to the plaintiff,' and by virtue of sub-s (5) the words shall be treated as published innocently in relation to the plaintiff 'if and only if' the conditions in paras (a) and (b) of that subsection are satisfied. Neither of the conditions was satisfied in this case. With regard to the condition in para (a), the plaintiff was referred to in the publication by its name and therefore there can be no question that the defendant did not intend to publish the words of and concerning the plaintiff. As for the condition in para (b), the words are defamatory of the plaintiff on the face thereof, as I have found.

In *Sandison* v *Malayan Times Ltd & Ors*[8] the plaintiff claimed damages for libel in respect of an article published by the defendants. Though he was not specifically named or mentioned in the article, he was, as the trial judge held, 'instantly recognizable by all those readers of the newspaper who happened to know him.' One of the defences raised was s 7 of the Defamation Ordinance 1957, which is the equivalent of s 7 of our Act. Ong J who tried the case, rejected this defence, and said at p 334:

> The offending article was the result of an interview by the defendants' report with the director of the Anti-Corruption Agency and plainly referred to a particular person whose identity was known or could have been discovered without the least difficulty. Certainly the reporter must have known. When the plaintiff was so clearly pin-pointed in the article, I do not think that the publisher can be heard to say that it was not intended to be published of and concerning the plaintiff or that the publisher had in the circumstances exercised all reasonable care in relation to the publication.

That passage of the judgment, I find, is extremely apt in relation to this case.

Secondly, again under sub-s (1)(b) of s 7, the offer of amends has to be made 'as soon as practicable' after the defendant received notice that the words complained of were or might be defamatory of the plaintiff. This the defendant failed to do, as can be seen from the sequence of events that ensued after the publication of the article. Immediately after the article had been brought to the plaintiff's attention, its solicitors telefaxed a lengthy letter on 15 June 1989 to the defendant complaining that the article was defamatory of the plaintiff and demanding an immediate apology and withdrawal of the article. On the following day, the defendant's solicitors in Hong Kong replied to the plaintiff's solicitors also by telefax stating that the defendant was undertak-

ing its own investigation and requesting a draft apology for consideration in the meanwhile. A draft was immediately forwarded by the plaintiff's solicitors to the defendant's solicitors. Then on 21 June 1989 came the following letter from the defendant's solicitors in Hong Kong:

> Dear Sirs,
>
> Re: Bank of China vs Asiaweek
>
> Our client has had ample opportunity to consider your letters 15 and 16 June 1989, with enclosures.
>
> It is not disputed and cannot be disputed that the words attributed to Min You Chi were used by him. We have had no hesitation in advising our client that it has a complete defence to the allegations made by Min You Chi, namely, justification and fair comment.
>
> The assertion is that the statement that Bank of China, Singapore, 'suspended business temporarily' was made 'recklessly and without any prior investigation'. Indeed, the opposite is the case. In publishing such statement our client relied upon the edition 9 June 1989 of 'Ta Kung Pao' which we are instructed is under the same ultimate authority as Bank of China. A copy of the relevant extract follows this message.
>
> Whilst the allegations made in previous correspondence are rejected our client has requested we invite Min You Chi to write to it with a view to publication of its letter (in the Chinese language) in the Letters section of *Yazhou Zhoukan*. Any letter submitted for publication should be sent to us on behalf of our client not later than close of business Thursday 22 June Hong Kong time.
>
> Yours faithfully
>
> Sgd Robin Bridge and John Liu

The stand taken by the defendant then was unequivocal; it was combative and there was no question of any apology or regret or indication that an offer of amends would be forthcoming. That, of course provoked reply from the solicitors for the plaintiff on 21 June 1989, which I need not set out in any detail, as nothing turns on it. Following that letter, on 24 June 1989, the solicitors for the plaintiff took out the writ against the defendant. Nothing of any importance occurred until 12 July 1989 when the defendant's solicitors in Singapore, Messrs Chor Pee & Co, wrote to the plaintiff's solicitors the following letter:

> Dear Sirs
>
> Suit No 1206 Of 1989
>
> Bank of China vs Asiaweek Limited
>
> Our clients would like to explore the possibility of settling the action amicably. To that end, our clients are prepared to publish in the forthcoming issue of *Yazhou Zhoukan* of 14th instant, an item in terms of the enclosed draft. They are also prepared to pay all reasonable legal costs incurred todate.
>
> We would be grateful if you would let us know not later than noon of 14th instant whether your clients would accept publication of the item and payment of reasonable legal costs in full and final settlement of the action. If they are so prepared, we would be grateful for a breakdown of your legal costs.
>
> Your clients may have noticed that in our clients' most recent issue of *Yazhou Zhoukan*, they have said in an article that the report in Ta Kung Pao that your clients had temporarily suspended business was in error. A copy of the relevant page of the aforesaid issue together with the English translation is enclosed.
>
> We are instructed that if our clients' proposals as contained in this letter are not acceptable to your clients, then our clients may well seek to establish that these proposals amount to a defence under s 7 of the Defamation Act (Cap 75).
>
> Yours faithfully
>
> sgd Chor Pee & Co

That was not an offer of amends under s 7 of the Act; nor was it intended to be so. It was an offer for a settlement which, however, was not accepted by the plaintiff. It is significant that as of 18 July 1989, no offer of amends under s 7 had been made by the defendant; that was more than a month after the defendant had been notified that the article complained of was defamatory of the plaintiff. By then the subject matter of complaint must have been fully investigated. It was certainly considered by no less than two firms of solicitors, and without being too presumptuous, one can assume that the defendant must have taken the appropriate legal advice. Yet it did not hasten to take steps to make an offer of amends or at least give notice that it would be making an offer of amends under s 7. It was quite content to let the matter drift.

Only on 28 July 1989 did the defendant's solicitors give notice that the defendant formally made an offer of amends under and for the purposes of s 7 of the Defamation Act, and they enclosed a draft affidavit expressed to be affirmed by the defendant's director and editor-in-chief, Michael O'Neill. The affidavit was filed on 1 August 1989 and paras 3, 4 and 5 stated as follows:

> 3 The words about which complaint is made came to me as a director and editor-in-chief of the defendant in the ordinary and regular course of business from Ta Kung Pao, a newspaper published and printed in Hong Kong known to the defendant and to me personally to be under the ownership of, and to operate at the direction of, the communist party and/or government of the People's Republic of China. I should add that Ta Kung Pao is known to the defendant generally and to me personally for having a reputation in Hong Kong for factual accuracy. A copy of the article from which the words complained of were taken, appearing in Ta Kung Pao on 9 June 1989, is now produced and shown to me marked 'MON-2'. A certified copy of translation of this exhibit will be provided to this honourable court at a later date.
>
> 4 Soon after receipt of this letter 15 June 1989 from the plaintiff's solicitors herein, a copy of which is now produced and shown to me marked 'MON-3', I caused the defendant to make enquiries as to the accuracy of the item

exh 'MON-2'. As a result of what I was informed the defendant, in its issues of *Asiaweek* of 18 June 1989 and 16 July 1989, published articles putting the events of the first week June 1989 in perspective. Ta Kung Pao published an apology in its edition 26 June 1989. As a result of such apology the defendant similarly published an apology in its edition of *Asiaweek* 16 July 1989. There are now produced and shown to me marked 'MON-4', 'MON-5' and 'MON-6' copies of the three editions of *Asiaweek* to which I have referred. There is now produced and shown to me marked 'MON-7' a copy of an extract from Ta Kung Pao 26 June 1989. Similarly, certified translations of these exhibits will be produced to the honourable court at a later date.

5 By reason of the facts herein before appearing I say that the matter of which complaint is made was published innocently. I refer to the letters of the defendant's solicitors herein 12 July and 15 July 1989 respectively, copies of which are now produced and shown to me marked 'MON-8' and 'MON-9' containing an offer of amends within the meaning of s 7 of the Defamation Act (Cap 75).

From this affidavit, it seems to me that the defendant in relation to the publication of the offending article was relying heavily on 'Ta Kung Pao', and after the defamatory article was brought to its attention it merely followed the footsteps of 'Ta Kung Pao'. The affidavit said that the defendant published in its issues of *Asiaweek* of 18 June 1989 and 16 July 1989 articles 'putting the events of the first week June 1989 in perspective' — between the two articles there was an inexplicable lapse of nearly one month. 'Ta Kung Pao' published an apology in its edition of 26 June 1989, and 'as a result of such apology' the defendant 'similarly published an apology in its edition of *Asiaweek* of 16 July 1989' — again there was an inexplicable lapse of some 20 days. Since it appeared to follow 'Ta Kung Pao' on the matter of apology it is curious why it could not have published its apology immediately after 26 June 1989, and why it could not have made its offer of amends soon thereafter, for instance, by 1 July 1989. The various publications referred to in para 4 of Michael O'Neill's affidavit were in Chinese, and up to the date of hearing of the appeal before me no English translation of any of them had been furnished. I can therefore make no observation on what they published.

On a close examination of these material events as borne out indisputably by the documents before me, I have unhesitatingly come to the conclusion that the defendant did not make the offer of amends 'as soon as practicable' after it had received notice that the article it published was defamatory of the plaintiff. The defendant first took a combative stand — in my view, quite unnecessarily — in the defence of its article. Assuming that it was entitled at the first blush to take the stand as it did, the subsequent events unmistakably showed that it was indefensibly lackadaisical in its efforts of making the offer of amends in the circumstances. There is, in my opinion, no reason why it could not have made the offer of amends by 18 July 1989, by which date it must have investigated the matter fully and taken the necessary legal advice.

Lastly, the purported offer of amends has also not complied with the provisions of s 7(3)(b) of the Act. The defendant must have distributed copies of the issue of *Yazhou Zhoukan* of 18 June 1989. That being so, the offer of amends in conformity to s 7(3)(b) must contain an offer to take such steps as reasonably practicable on the part of the defendant to notify persons to whom copies had been distributed that the words were alleged to be defamatory of the plaintiff. That, however, the defendant had failed to do. Plainly, the defendant has not complied with the several requirements under s 7 of the Act; in consequence, there was no offer of amends made under s 7 of the Act, and even if there was, it was not made within the time frame prescribed in that section. The statutory defence averred in para 5 of the defence therefore cannot succeed, now or at a trial.

In the result, I have inexorably come to the conclusion that the defence filed is incontestably a sham, a hopeless and vexatious defence, and as such constitutes an abuse of the process of the court. No amendment of any kind can in any way improve it.

Appeal dismissed.

Solicitors: *Rajah & Tann; Tan Rajah & Cheah.*

Reported by *Azra Moiz*

City Developments Ltd v Commissioner of Stamp Duties

HIGH COURT (SINGAPORE) — ORIGINATING MOTION NO 79 OF 1988
CHAN SEK KEONG J
25 JANUARY 1991

Revenue Law — Stamp duty — Valuation of property — Basis of valuation — Method of valuation

City Developments ('CD') were dissatisfied with the assessment of stamp duty chargeable in respect of a conveyance on 24 March 1982 of vacant land to them by Garden Estates ('GE'). The Commissioner of Stamp Duty ('the Commissioner') had assessed the value of the property as $15,485,000 in reliance upon the valuation of the Chief Assessor. CD valued the property at $7,084,000 based on two valuations in 1982 and 1985. On this basis, the stamp duty chargeable would be $155,447. The valuation was done on a 'willing seller-prudent buyer' basis.

In 1987 CD obtained a supplementary valuation report. It purported to review the earlier valuation and to provide additional evidence to support it and to comment on the Chief Valuer's report.

The valuations relied on by CD took the development cost and sales revenue of the property up to 1987 to show that on the basis of the Chief Assessor's valuation, they would have suffered a loss. Alternatively they used three hypothetical rates